

**Letter of Findings: 01-20160400
Indiana Individual Income Tax
For The Tax Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was not required to file a 2011 Indiana individual income tax return because he was not an Indiana resident.

ISSUE

I. Indiana Individual Income Tax - Residency - Domicile.

Authority: IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-8.1-5-1; IC § 9-24-1-1.5; Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

Taxpayer protests the Department's proposed assessment for the 2011 tax year.

STATEMENT OF FACTS

Taxpayer is an individual. Taxpayer was previously a resident of Indiana, but he accepted a job and moved to Texas in 2010. However, he maintained his Indiana driver's license until December 2012. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for the tax year 2011, and that Taxpayer failed to file his 2011 Indiana individual income tax return. The Department, therefore, issued a proposed assessment for 2011 for income tax, penalty, and interest.

Taxpayer timely protested the proposed assessment. An administrative phone hearing was held. This Letter of Findings ensues and addresses Taxpayer's protest of the proposed assessment. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department assessed Taxpayer individual income tax for the 2011 tax year based on its conclusion that Taxpayer was an Indiana resident and that he failed to file his 2011 Indiana individual income tax return. Specifically, the Department determined that Taxpayer was a resident based on his possession of an Indiana driver's license until 2012, as well as record of an Indiana address. Taxpayer contends that he was not required to file a 2011 Indiana individual income tax return because he was not an Indiana resident.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong.

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year,

or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . . " IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). A nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which "domicile"—and thus residency—is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court explained, in relevant part:

Once acquired, domicile is presumed to continue because every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place. Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile. A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Id. at 1317 (internal quotations and citations omitted). The Indiana Supreme Court went on to conclude that:

Residency requires a definite intention and evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable. A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1318 (Internal quotations and citations omitted); see also *In the Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975) ("The person must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable.")

Additionally, [45 IAC 3.1-1-22](#) considers the following relevant facts in determining whether a new domicile has been established:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

These factors are not exclusive in determining an individual's intent to relocate. "The determination of a person's intent in relocating is necessarily a subjective one. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case." *Id.*

According to Department records, Taxpayer had a Texas address from November 2010 to December 2013. This is corroborated by a letter from Taxpayer's former landlord stating that he was a resident at the Texas apartment complex from October 2010 through August 2012. In addition, Taxpayer provided documentation from his employer showing his work assignments in Texas and Alabama in 2010 and 2011. Taxpayer also provided correspondence from his child's school confirming the child's enrollment and listing Taxpayer's Texas address. Department records further show that Taxpayer was registered to vote in Texas.

The only basis upon which the Department found that Taxpayer was domiciled in Indiana was the fact that he had an Indiana driver's license until 2012. However, the possession of an Indiana driver's license, by itself, is not

conclusive of a finding of Indiana residency, as the Indiana Bureau of Motor Vehicles is authorized to issue driver's licenses to non-residents. IC § 9-24-1-1.5.

In this case, Taxpayer has provided credible documentation sufficient to establish his intent to abandon his Indiana domicile in 2010. Consideration of the factors outlined in [45 IAC 3.1-1-22](#), the documentation provided by Taxpayer, and Department records support a finding that Taxpayer abandoned his Indiana domicile in 2010 with the intent of making Texas his new domicile. Therefore, Taxpayer proved the proposed assessment to be incorrect as required by IC § 6-8.1-5-1(c), and he is not subject to Indiana income tax for the tax year 2011 because he was a nonresident.

Residency cases are particularly fact sensitive, thus the position relayed within this document pertains only to this case and its specific set of facts.

FINDING

Taxpayer's protest is sustained.

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